



U.S. Department of Justice

United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

December 14, 2016

By ECF

The Honorable Edgardo Ramos United States District Judge Southern District of New York 500 Pearl Street New York, New York 10007

Re: <u>United States</u> v. <u>Ahmed Mohammed El Gammal</u>, 15 Cr. 588 (ER)

Dear Judge Ramos:

The Government respectfully submits this letter in response to the defendant's December 14, 2016 letter regarding the Stipulated Protective Order in this case ("Def.'s Ltr.").

First, the defendant's letter mischaracterizes the principal authority upon which it relies—United States v. Jones, 16 Cr. 019 (S.D.N.Y.). The defendant claims that, in Jones, "Judge Gardephe recognized that the proposed prohibition on discussing certain factual evidence with any third party, absent prior court authorization, is an overly broad impairment of a defendant's ability to prepare his defense" Def.'s Ltr. at 2. That is wrong. In Jones no one "proposed [a] prohibition" on sharing the materials with third parties. To the contrary, the protective order in Jones, including the language allowing the defense to show discovery materials to third parties, was suggested by the Government and was entered on consent. See Letter from AUSAs Buckley and DeFilippis to the Honorable Paul G. Gardephe and Proposed Protective Order, United States v. Jones, No. 16 Cr. 19 (PGG) (Mar. 26, 2016), ECF Nos. 17 and 17-1.

Further, the protective order sought by the Government, and ultimately entered by the Court, in another case cited by the defendant, *United States* v. *Ricaurte Gomez*, 15 Cr. 109 (NRB), an international narcotics case, addressed sensitivities surrounding recordings and electronic communications, and not the concerns implicated in this case. *United States* v. *Rahimi*, 16 Cr. 760 (RMB), also cited by the defendant, the prosecution of the individual who allegedly set off bombs in Manhattan and New Jersey in September 2016, similarly involved facts, circumstances, and law enforcement sensitivities different than those at issue here. ¹

¹ One or more of the undersigned has served as counsel of record for the Government in *Jones*, *Ricaurte-Gomez*, and/or *Rahimi*. Ms. Shroff represents the defendants in *Rahimi* and *Ricaurte-Gomez*.

Hon. Edgardo Ramos December 14, 2016

If anything, *Jones*, *Ricaurte-Gomez*, and *Rahimi* undercut any suggestion that the Government is reflexively restricting the defense from sharing discovery materials with third parties, as opposed to seeking appropriate protections based on the facts and circumstances of each case. Moreover, none of those cases involve a situation like the one here, where the defense is requesting, just weeks before trial, that the Government re-visit the confidentiality designations of hundreds of thousands of pages of documents, the overwhelming majority of which were produced many months ago, pursuant to a protective order stipulated to by the defense.

The Government also categorically rejects the defense's suggestion that it has in any way been careless in its own use of the Protected Materials. *See* Def.'s Ltr. at 2. In this regard, it bears noting that most, if not all, of the Government's fact witnesses at trial will consist of law enforcement officers, records custodians whose employers provided the documents to the Government in the first place, or individuals who were parties to the communications they will be testifying about.

In short, for the reasons set forth above, and in the Government's December 13, 2016 letter, the Government respectfully requests that the Protective Order remain in place as is, except with respect the documents on the Government's October 3, 2016 draft exhibit list, subject to the exceptions contained in footnote 2 of December 13 letter.

Respectfully submitted,

PREET BHARARA United States Attorney

by: ______s/_ Andrew DeFilippis

Brendan Quigley
Negar Tekeei
Assistant United States Attorneys
(212) 637-2231/2190/2482

Enclosures

cc: Sabrina P. Shroff/Annalisa Mirón/Daniel Habib Counsel for Ahmed Mohammed El Gammal